

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1905.

1905 1906

No. 1610.

394

No. 22, SPECIAL CALENDAR.

SAMUEL GASSENHEIMER, PLAINTIFF IN ERROR.

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA

FILED SEPTEMBER 21, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 4 Special Calendar.

No. 1610.

January Term 1906

No. 22, SPECIAL CALENDAR.

SAMUEL GASSENHEIMER, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

SAMUEL GASSENHEIMER, Plaintiff in Error, }
vs. } No. 1610.
DISTRICT OF COLUMBIA. }

a In the Police Court of the District of Columbia, September Term, 1905.

DISTRICT OF COLUMBIA }
vs. } No. 275,668. Information for Violation
SAMUEL GASSENHEIMER. } of Police Regulations.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 (Information.)

In the Police Court of the District of Columbia, August Term, A. D. 1905.

THE DISTRICT OF COLUMBIA, ss:

Andrew B. Duvall, Esq., corporation counsel, by James F. Smith, assistant corporation counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed, and complains that Samuel Gassenheimer, late of the District of Columbia aforesaid, on the 24th day of August, in the year A. D. nineteen hundred and five, in the District of Columbia aforesaid, and in the city of Washington, on Penn. avenue, northwest, being the owner of a certain licensed hack, did then and there, and on divers other times since the date aforesaid, cause the same to occupy a stand while unemployed on Pennsylvania avenue other *other* than one designated by the Commissioners of the District of Columbia as a public hackstand; contrary and in violation of the police regulations of the District of Columbia, and constituting a law of the District of Columbia:

ANDREW B. DUVALL,
Corporation Counsel,
By JAMES F. SMITH,
Assistant Corporation Counsel.

Personally appeared George S. Catts this 31st day of August, A. D. 1905, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

L. F. ENGLSBY,
Deputy Clerk Police Court of the District of Columbia.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 275,668.
vs.		
SAMUEL GASSENHEIMER.		

Now comes the defendant, Samuel Gassenheimer, by his attorneys, D. W. Baker and M. F. Mangan, and moves the court to quash the information filed in the above entitled cause, on the following grounds:

1. Because the information charges no offense under the laws of the District of Columbia.

2. Because the ordinance under which this prosecution is brought, does not include and was not intended to apply to vehicles propelled by steam, gasoline or electricity.

D. W. BAKER,
M. F. MANGAN,
Attorneys for Def't.

[Endorsed:] In the police court of the District of Columbia. District of Columbia vs. Samuel Gassenheimer. Motion to quash information.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 275,668.
vs.		
SAMUEL GASSENHEIMER.		

Be it remembered at the trial of this cause, which came on for hearing on the 31st day of August, A. D. 1905, before the presiding justice, the defendant moved the court to quash the information filed against him in this cause on the ground that it did not charge him with the violation of any ordinance in effect in the District of Columbia, as set out in the written motion filed; but the court overruled said motion, to which ruling counsel for the defendant excepted, which said exception was duly noted at the time that the same was taken and notice thereof was given of an intention to apply to the Court of Appeals for a writ of error.

Thereupon the defendant pleaded not guilty, and the District, to prove the issues joined on its part, produced as a witness Inspector GEO. S. CATTS, who testified as follows: That he was the hack inspector of the District of Columbia and knew the defendant, Gassenheimer; that the defendant, Gassenheimer, is the proprietor of a certain number of licensed automobiles which stand in front of the Columbia hotel situated at 1413 Pennsylvania avenue, northwest; that on the evening of the 24th of August, he, accompanied by two officers, watched the automobiles standing there for about ten minutes; on the automobiles were placards with the words "Automobiles to hire;" that the officers then went over and got in one of the automobiles and rode away; that the licenses for the vehicles were
4 in Mr. Gassenheimer's name. On cross-examination witness testified that he had never seen an automobile on a public hackstand but that they had a right there under their licence; that he did not see Mr. Gassenheimer in front of the hotel but saw his representative; that he never saw the notice of an automobile office in the window of the Columbia hotel.

Thereupon J. R. HOOD, a member of the Metropolitan police force, testified that on the evening of the 24th of August, the inspector, another officer and himself had these automobiles under observation for about ten minutes; that at that time there was only one automobile there; that Mr. Saunders asked the man in charge there if the automobile was engaged and the man replied, "No;" that they told the man they wanted to ride around town, and then got in and rode around for an hour, and that the man charged them three dollars for the ride.

Thereupon the District produced A. E. BROWN, a member of the Metropolitan police force, who testified that he had Mr. Gassenheimer's place under observation on the 24th of August and since then; that last night he was standing with the inspector and another officer watching the four automobiles in front of the hotel; that they stood there for about ten or fifteen minutes keeping the place under observation, and that there did not seem to be much business done; that he did not see them take any passengers; that they went down the street and slowed up when they got near the automobiles; they asked if it was engaged, the answer was, "Do you want to take a ride" and they then got in one of the automobiles and rode up to Pennsylvania avenue and 25th street where they got out and paid the man seventy-five cents, which was what he asked. On cross-examination witness testified that he had never seen automobiles on a public stand in the District of Columbia; that
5 downtown he had seen large automobiles hauling from thirty to fifty people standing in front of certain hotels, but had not seen any in his precinct.

Thereupon the District produced A. T. SIDES, a member of the Metropolitan police force, who testified that he had never heard any agreements made between the automobile men and people that have come along and engaged automobiles; that he has frequently seen people come along the street, get an automobile and go off without going into any building or leaving the sidewalk. On cross-examination witness testified that he had seen the large sight-seeing automobiles go up to 14th street and the Avenue and stand there for some time,—perhaps twenty minutes or a half hour,—before starting.

Thereupon the District produced MARTIN BROWN, a member of the Metropolitan police force, who testified that he was on the beat in which the Columbia hotel is located, and that he had had the defendant's automobiles under observation; that Mr. Gassenheimer has been in the automobile business for some time; that he was on the beat for thirteen years; that Mr. Gassenheimer moved from the Lawrence hotel to where he is now; that he went to the Columbia hotel to find out if Mr. Gassenheimer had an office there and Mr. Gassenheimer told him he had; that he never went any further than that. That he had seen pedestrians approach, get into the vehicles; that he does not know whether the persons who would get in the automobiles were guests of the hotel or not, but that the largest number of them did not come from the hotel.

Thereupon the District rested.

6 And thereupon the defendant himself took the stand and testified as follows: That his automobile company rents and maintains an office in the Columbia hotel, and have automobiles in the front thereof for the hire to guests. That he does not run an automobile himself, but has men to run them and has also a clerk stationed in the office at the Columbia hotel; that automobiles are sent over to the hotel upon telephone calls for the same; that he sends the automobiles to the Columbia hotel just as automobiles and carriages are sent to the Raleigh and other hotels, to supply the guests of the house. On cross examination he testified that he owned these automobiles and had public hack licenses for the same, but that he did not own the hotel and was not interested in the conduct of the hotel business.

This is the substance of all the evidence in the case.

And thereupon counsel for the defendant moved the court to find as matter of law that the defendant was not guilty of any violation of any ordinance in effect in the District of Columbia, and further that he was not guilty of the alleged charge in said information; but the court overruled said motion and found the defendant guilty; to which overruling of said motion and finding of the court counsel for the defendant excepted, which said exception was duly noted at the time the same was taken and notice thereof given of an intention to apply to the Court of Appeals for a writ of error.

All of which said exceptions taken as aforesaid are hereby incorporation in a bill of exceptions and sign- this 2nd day of September, A. D. 1905, *nunc pro tunc*.

(Signed)

LEWIS I. O'NEAL,
Presiding Justice.

I agree to this bill of exceptions.

J. FRANCIS SMITH,
Att'y for D. C.

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(*Copy of Docket Entries.*)

In the Police Court of the District of Columbia, August Term, 1905.

DISTRICT OF COLUMBIA	}	No. 275,688. Information for Violation of the Police Regulations.
vs. SAMUEL GASSENHEIMER.		

August 31, 1905.—Motion to quash information.

Motion to quash information argued and overruled.

Defendant arraigned. Plea: Not guilty. Judgment: Guilty. Sentence: To pay a fine of ten dollars and, in default, to be committed to the workhouse for the term of thirty days.

Exceptions taken to the rulings of the court on matters of law and notice given by the defendant in open court at the time of said rulings of his intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of fifty dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Jonas W. Hechinger, surety.

Sept. 2nd.—Bill of exceptions filed, settled and signed.

Sept. 12, 1905.—Writ of error received from the Court of Appeals of the District of Columbia.

8 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA,	}	ss :
District of Columbia,		

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 7 inclusive, to be true copies of originals in cause No. 275,668 wherein The District of Columbia is plaintiff and Samuel Gassenheimer defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 21st day September, A. D. 1905.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

9 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Lewis I. O'Neal, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between District of Columbia, plaintiff, and Samuel Gassenheimer, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard,
Seal Court of Appeals, Chief Justice of the said Court of Appeals,
District of Columbia. the 12th day of September, in the year of
our Lord one thousand nine hundred and
five.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia,
By MONCURE BURKE,
Assistant Clerk.

Allowed by
LOUIS E. McCOMAS,
*Associate Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: District of Columbia police court. No. 1610. Samuel Gassenheimer, plaintiff in error, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Sep. 21, 1905. Henry W. Hodges, clerk.

